

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zev Carter	Team: Squad #3	CCRB Case #: 201909948	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/06/2019 10:56 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 62	18 Mo. SOL 5/6/2021	EO SOL 12/21/2021	
Date/Time CV Reported Thu, 11/07/2019 2:32 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/15/2019 9:07 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Florin Coste	18939	950241	062 PCT
2. POM Joseph Tang	01137	964796	062 PCT
3. POM Ajxan Dalipovski	22136	963943	062 PCT
4. POM Jeffrey Maira	16359	944113	062 PCT
5. SGT Heriberto Hernandez	01584	932167	062 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kelly Espinoza	24971	967055	REC TNG
2. POM Marat Yermiyayev	15880	966404	062 PCT
3. POF Regina LaBruzzo	13729	966145	062 PCT
4. POM Justin Ruiz	14171	963730	062 PCT
5. POF Stephanie Jeune	03472	964572	062 PCT
6. POM Robert Henschel	21746	962468	062 PCT
7. POM Justin Hernandez	23966	964053	062 PCT
8. POF Danielle Valentine	23221	957240	062 PCT
9. POM Nicholas Occhipinti	14430	956987	062 PCT
10. POM Ramesh Ramdass	20652	963222	062 PCT
11. POM Sajjad Baloch	23161	962238	062 PCT
12. POM Nobin Samu	16499	958046	062 PCT
13. LT Salman Asghar	00000	934426	062 PCT
14. SGT Jose Alegre	01414	937957	062 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Florin Coste	Abuse: Police Officer Florin Coste threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
B.POM Ajxan Dalipovski	Force: Police Officer Ajxan Dalipovski used physical force against § 87(2)(b)	
C.POM Florin Coste	Force: Police Officer Florin Coste used a Taser against § 87(2)(b)	
D.POM Joseph Tang	Abuse: Police Officer Joseph Tang threatened an individual with the use of force.	
E.POM Joseph Tang	Abuse: Police Officer Joseph Tang threatened an individual with the use of force.	
F.POM Florin Coste	Abuse: Police Officer Florin Coste threatened § 87(2)(b) with the use of force.	
G.POM Florin Coste	Abuse: Police Officer Florin Coste frisked § 87(2)(b)	
H.POM Florin Coste	Abuse: Police Officer Florin Coste threatened an individual with the use of force.	
I.POM Joseph Tang	Abuse: Police Officer Joseph Tang threatened an individual with the use of force.	
J.POM Florin Coste	Abuse: Police Officer Florin Coste threatened § 87(2)(b) with the use of force.	
K.POM Florin Coste	Abuse: Police Officer Florin Coste threatened an individual with the use of force.	
L.POM Florin Coste	Abuse: Police Officer Florin Coste threatened an individual with the use of force.	
M.POM Florin Coste	Abuse: Police Officer Florin Coste threatened to issue a summons to an individual.	
N.POM Jeffrey Maira	Abuse: Police Officer Jeffrey Maira threatened to arrest an individual.	
O.SGT Heriberto Hernandez	Abuse: Sergeant Heriberto Hernandez threatened an individual with the use of force.	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

## Case Summary

On November 7, 2019, Sergeant Tanisha McKenzie of the 62<sup>nd</sup> Precinct filed this complaint with IAB § 87(2)(b) over the phone on behalf of § 87(2)(b) § 87(2)(b) § 87(2)(b) and other unidentified individuals.

On November 6, 2019, at approximately 10:56 p.m., Lieutenant Salman Ashgar, Police Officer Florin Coste, Police Officer Joseph Tang, Police Officer Marat Yermiyayev, and Police Officer Ajxan Dalipovski of the 62<sup>nd</sup> Precinct and Police Officer Kelly Espinoza of the Recruit Training Section responded to a report of a physical fight involving § 87(2)(b) gas station workers § 87(2)(b) and § 87(2)(b) and other unknown individuals in front of a gas station at § 87(2)(b) in Brooklyn. The officers arrived after the fight had ended and started to leave. § 87(2)(b) § 87(2)(b) and multiple other individuals arrived at the location. § 87(2)(b) punched § 87(2)(b) in the mouth. Lieutenant Ashgar called for additional units and other officers from the 62<sup>nd</sup> Precinct responded, including Police Officer Axjan Dalippovski, Police Officer Regina LaBruzzo, Police Officer Justin Ruiz, Police Officer Stephanie Jeune, Police Officer Robert Henschel, Police Officer Danielle Valentine, Police Officer Nicholas Occhipinti, Police Officer Ramesh Ramdass, Police Officer Sajjad Baloch, Police Officer Nobin Samu, Police Officer Jeffrey Maira, Sergeant Heriberto Hernandez, and Sergeant Jose Alegre of the 69<sup>th</sup> Precinct. PO Coste pointed his Taser at § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Dalipovski used physical force against § 87(2)(b) (**Allegation B: Force, § 87(2)(g)**). PO Coste used his Taser against § 87(2)(b) (**Allegation C: Force, § 87(2)(g)**). PO Tang pointed his Taser at two unidentified individuals (**Allegations D and E: Abuse of Authority, § 87(2)(g)**). PO Coste pointed his Taser at § 87(2)(b) and then frisked him (**Allegations F and G: Abuse of Authority, § 87(2)(g)**). PO Coste and PO Tang pointed their tasers at an unidentified individual (**Allegations H and I: Abuse of Authority, § 87(2)(g)**). PO Coste pointed his Taser at § 87(2)(b) a second time (**Allegation J: Abuse of Authority, § 87(2)(g)**). PO Coste pointed his Taser at unidentified individuals two more times (**Allegations K and L: Abuse of Authority, § 87(2)(g)**). PO Coste threatened to issue a summons to an unidentified individual (**Allegation M: Abuse of Authority, § 87(2)(g)**). PO Maira threatened to arrest an unidentified individual (**Allegation N: Abuse of Authority, § 87(2)(g)**). Sgt. Hernandez threatened an unidentified individual with the use of force (**Allegation O: Abuse of Authority, § 87(2)(g)**). § 87(2)(g), § 87(2)(b) was arrested (§ 87(2)(b)) and charged with assault in the third degree, attempted assault in the third degree, menacing in the third degree, and harassment in the second degree. § 87(2)(b), § 87(2)(b) and § 87(2)(b) were issued criminal court summonses § 87(2)(b), § 87(2)(b), and § 87(2)(b), respectively, for disorderly conduct. § 87(2)(b) was taken to § 87(2)(b) in Brooklyn and treated for a traumatic subdural hemorrhage with loss of consciousness and a skull fracture. § 87(2)(b) was discharged from the hospital § 87(2)(b) § 87(2)(b) suffered a swollen lip and refused medical attention.

This case contains body-worn camera (BWC) video from PO Dalipovski, PO LaBruzzo, PO Espinoza, PO Ruiz, PO Yermiyayev, PO Jeune, PO Coste, PO Henschel, PO Hernandez, PO Tang, PO Valentine, PO Occhipinti, PO Ramdass, PO Baloch, PO Samu, and Sgt. Hernandez (**01 Board Review**).

Lieutenant Ashgar has since been reassigned to the Office of the Chief of Special Operations. PO Dalipovski has since been reassigned to the 63<sup>rd</sup> Precinct. PO Espinoza, who was in field training during the incident, has since been permanently assigned to the 62<sup>nd</sup> Precinct.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Florin Coste threatened § 87(2)(b) with the use of force.**

**Allegation (B) Force: Police Officer Ajxan Dalipovski used physical force against § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Florin Coste used a Taser against § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Joseph Tang threatened an individual with the use of force.**

**Allegation (E) Abuse of Authority: Police Officer Joseph Tang threatened an individual with the use of force.**

The following facts are undisputed: On November 6, 2019, at approximately 10:51 p.m., in front of a gas station at § 87(2)(b) in Brooklyn, there was an altercation and physical fight between two parties: one, § 87(2)(b) who worked at the gas station, and a would-be customer named § 87(2)(b) § 87(2)(b) called § 87(2)(b) § 87(2)(b) and other unidentified individuals, all of whom came to the gas station. At the gas station, § 87(2)(b) ran to § 87(2)(b) and struck him once in the face. PO Dalipovski used physical force to move § 87(2)(b) away from § 87(2)(b). PO Coste deployed his Taser in prong mode, incapacitating § 87(2)(b) § 87(2)(b) fell to the ground and struck his head, injuring him. PO Tang pointed his Taser at two unidentified individuals who were on scene. PO Coste arrested § 87(2)(b) EMTs transported § 87(2)(b) to § 87(2)(b).

Allegations A and C are being plead based on BWC video. None of the civilians made these allegations.

In his sworn statements to the CCRB, § 87(2)(b) stated that on November 6, 2019, at approximately 10:56 p.m., he was riding in a car with his friend § 87(2)(b) (02, 03 Board Review). § 87(2)(b) brother § 87(2)(b) called § 87(2)(b) and told him that he had been “jumped” by three individuals at § 87(2)(b) in Brooklyn. § 87(2)(b) and § 87(2)(b) went to the location and saw that 10-12 police officers and an unknown number of civilians were present. Upon arriving, § 87(2)(b) walked from the curb toward § 87(2)(b) and the officers, who were standing near gas pumps. He was not carrying anything. One heavyset man (identified by the investigation as § 87(2)(b) started to scream and threaten § 87(2)(b) § 87(2)(b) took a step toward with the intention of finding out why the man was yelling and to tell him to be quiet. When § 87(2)(b) was two or three steps away from the individual, an officer (identified by the investigation as PO Dalipovski) pushed § 87(2)(b) on his right side. § 87(2)(b) raised his hands in the air and apologized. At the same time, another officer (identified by the investigation as PO Coste) used his taser against § 87(2)(b) from two or three feet away. The Taser prongs hit § 87(2)(b) in his right shoulder and right thigh. Officers never gave § 87(2)(b) any orders or told him to step back. § 87(2)(b) did not remember punching anybody. § 87(2)(b) fell to the ground, saw blood, and felt disoriented. He lost consciousness and did not remember anything after falling. § 87(2)(b) was taken to § 87(2)(b) where he was treated for internal head bleeding. At the time of the interview, § 87(2)(b) felt pain in his right shoulder, had difficulty balancing and continued to bleed from his head. § 87(2)(b) could not identify anyone else who was on scene.

PO Coste’s BWC recording in IA #162 starts as PO Coste is walking away from the gas station (01 Board Review). At 0:15, § 87(2)(b) dressed in a black hooded sweatshirt and black pants, exits a silver sedan and walks toward the gas station at a normal pace. His hands are by his side.

Lieutenant Asghar walks toward him. At 0:17, PO Coste points his taser at § 87(2)(b) for approximately one second (Allegation A), then lowers it and walks toward him. A second man in a teal hat (hereafter referred to as Individual 1), approaches the gas station. Lieutenant Asghar walks § 87(2)(b) backwards toward the road away from the gas station as § 87(2)(b) says something. At 0:19, PO Coste points his Taser at § 87(2)(b) again (Allegation A) and lowers it after less than a second. A man in a dark grey hooded sweatshirt and black pants (hereafter referred to as Individual 2) exits the silver sedan and approaches the gas station. PO Coste points at the man and he walks away from PO Coste. At 0:27, a fourth man wearing a dark jacket (hereafter referred to as Individual 3) runs toward the gas station. § 87(2)(b) wearing all black, runs toward the gas station. At 0:30, PO Tang holds out his hands to make space between the gas station workers and the five newcomers. Individual 3 pushes PO Tang's hand away. PO Coste turns away and then back to the group at 0:34 in the recording. § 87(2)(b) has just punched § 87(2)(b) and lunged away from him toward PO Espinoza and PO Dalipovski. PO Dalipovski briefly wraps his arms around § 87(2)(b)'s body, and then leaves the frame. When he returns to the frame at 0:36, § 87(2)(b) and PO Dalipovski have rotated 180 degrees and § 87(2)(b) is on the ground. § 87(2)(b) rises to his feet. At 0:37, PO Coste's Taser is briefly visible and § 87(2)(b) falls to the ground (Allegation C). PO Coste pulls § 87(2)(b) over from his stomach to his back. His Taser is still in his hand and the visible wires show that the Taser has been deployed.

PO Yermiyayev's BWC recording in IA #162, at 0:25, shows that PO Yermiyayev started to walk toward the street as the group of men arrived at the gas station (**01 Board Review**). At 0:33, Lieutenant Asghar holds back § 87(2)(b). At 0:41, PO Tang assists Lieutenant Asghar. At 0:48 in the recording, § 87(2)(b) throws a punch at § 87(2)(b). At 0:53, § 87(2)(b) is getting to his feet from the ground with PO Dalipovski just behind him. PO Coste walks toward § 87(2)(b) and PO Dalipovski and deploys his Taser. § 87(2)(b) falls to the ground.

PO Dalipovski's first BWC recording in IA #162, at 0:25, shows that he exited a police vehicle and approached a group of officers and civilians at the gas station (**01 Board Review**). § 87(2)(b) who is among them, is visible at 0:29 in the recording wearing black clothing with long dark hair. The rest of the video does not capture any threats or uses of force because the camera's view is obscured.

PO Espinoza's BWC recording in IA #162, at 0:53, shows that she approached the group behind PO Dalipovski (**01 Board Review**). At 0:57 in the recording, § 87(2)(b) on the left side of the frame, punches § 87(2)(b) who is visible wearing a white sweatshirt. PO Dalipovski pushes § 87(2)(b) away from § 87(2)(b). PO Dalipovski holds on to § 87(2)(b) from behind and pushes him to the ground. At 1:03, PO Coste is visible on the right side of the frame with his Taser pointed at § 87(2)(b). § 87(2)(b) begins to get to his feet and at 1:04, the sound of a Taser being deployed is audible. When the Taser is deployed, PO Espinoza's BWC is covered. At 1:05, § 87(2)(b) falls to the ground. At 1:10, PO Tang, standing in the center of the frame around 20 feet from PO Espinoza, points his Taser to his left at Individual 3 and Individual 1 while walking and looking in § 87(2)(b)'s direction (Allegations D and E).

PO Tang's BWC recording in IA #162 is consistent with PO Coste, PO Espinoza, PO Dalipovski, and PO Yermiyayev's recordings (**01 Board Review**). The video does not show § 87(2)(b) punch § 87(2)(b). At 0:56, PO Tang's Taser is briefly visible on the extreme left side of the frame (Allegations D and E) as he walks toward § 87(2)(b) who is on the ground. PO Baloch's BWC recording in IA #162 shows that he did not arrive until after officers handcuffed § 87(2)(b) (**01 Board Review**). At 1:12, the laceration on the back of § 87(2)(b)'s head is visible. At 9:50, when PO Baloch is lodging § 87(2)(b) in the 62<sup>nd</sup> Precinct stationhouse, § 87(2)(b) identifies himself by name.

In a phone statement, § 87(2)(b) stated that on the date of the incident, he was working at the gas station (**04 Board Review**). He was involved in a dispute and a fight with a customer. § 87(2)(b) and the customer both called the police, then the customer left. § 87(2)(b) spoke to officers when they arrived. As he was speaking to the officers, three vehicles came to the location and five or six men exited the vehicles. The men ran toward § 87(2)(b) and two of them attacked him. Officers controlled one of the men, but another (identified by the investigation as § 87(2)(b)) pushed an officer out of his way. Officers told § 87(2)(b) to stop and threatened to use their Tasers against him. § 87(2)(b) punched § 87(2)(b) in the mouth. Officers used their Tasers against § 87(2)(b) and called an ambulance.

§ 87(2)(b) who was listed as another victim who § 87(2)(b) fought with in the UF61 report prepared for § 87(2)(b)'s arrest, was unavailable to the investigation after contact attempts (see IA #317; **13 Board Review**). § 87(2)(b) and § 87(2)(b) were uncooperative with the investigation after contact attempts (see IA #317). The investigation was unable to identify Individuals 1-3 because neither § 87(2)(b) nor § 87(2)(b) identified other parties who witnessed this incident other than § 87(2)(b) and § 87(2)(b) and because the investigation was unable to obtain a phone statement from § 87(2)(b), § 87(2)(b) and § 87(2)(b).

In his CCRB interview, PO Coste stated that on the date of the incident, he responded to a report on the radio about groups of men fighting at the location (**05 Board Review**). PO Coste never heard a description of the perpetrators of the physical fight that transpired before he arrived at the stationhouse. By the time he arrived, the two groups – a group of gas station workers and another group – had stopped fighting. The gas station workers were present but the other group was not. Units began leaving the scene, leaving only PO Coste, PO Tang, Lieutenant Asghar, and PO Yermiyayev. As PO Coste was leaving, he heard cars braking heavily. Multiple cars with multiple people inside of them arrived at the location. 8-10 males, all at least 5'11" tall, exited the cars and ran toward the gas station workers. PO Coste and other officers tried to position themselves between the newcomers and the gas station workers, and he realized that he and the officers were outnumbered. He also thought about how PO Tang is of small stature. An officer called for additional units. PO Coste thought that the time it might take for reinforcements to arrive might be too long to wait in this situation. PO Coste recognized that one of the men, whose name and description he did not remember, was a drug dealer who had previously been arrested for gun possession in the 62nd Precinct two-three months earlier. PO Coste believed that § 87(2)(b) in the group may have been carrying a weapon but did not know which person in particular might have been armed. Another car arrived at the location. PO Coste believed that the newcomers wanted to fight the men who were already at the gas station.

PO Coste stated that he unholstered his Taser, held it out in front of him at the males, and said, "Get back," "calm down," and "get back in your car." He did this because he wanted the males to comply with his orders. Lieutenant Asghar was holding back two of the males. The situation was hectic and many people seemed to be fighting. § 87(2)(b) and the other males pushed through the officers toward the gas station workers. § 87(2)(b) cursed and swung at one of the workers, whom he described as a heavyset middle eastern man with a hooded sweatshirt (identified by the investigation as § 87(2)(b) and punched him in the mouth. PO Dalipovski and PO Espinoza, who at this point had arrived, grabbed § 87(2)(b) hands, pulled them behind his back, and pulled him to the ground or to a crouching position. § 87(2)(b) got to his feet, pushed the officers with his right hand, and went back to the individual whom he had just struck.

PO Coste stated that he began to consider § 87(2)(b)'s violent behavior, his resistance, and the number of civilians compared to number of officers on scene (two of whom, PO Tang and PO

Espinoza, were not very strong), and decided to use his Taser against § 87(2)(b). He did not feel that there was enough time to warn § 87(2)(b) that he would use the Taser because § 87(2)(b). PO Dalipovski, and PO Espinoza were “wrestling” with one another. He used his Taser in prong mode from 10-12 feet away while aiming at the center of § 87(2)(b)’s body. The prongs entered § 87(2)(b)’s leg and upper torso. PO Coste applied electrical current for five seconds, causing § 87(2)(b)’s body to twist and fall to the ground face-up. § 87(2)(b) was briefly incapacitated and PO Coste handcuffed him. Other officers started to perform first aid on § 87(2)(b) and PO Coste started to look around to regain his bearings on the situation.

In his CCRB interview, PO Tang stated that when he arrived, the party that had reportedly tried to fight the 911 caller had already left, but that approximately five men, all taller than PO Tang, arrived ran toward the 911 caller shortly afterward (**07, 08 Board Review**). The men tried to run past the officers so that they could reach the caller. PO Tang considered their behavior aggressive. PO Tang did not remember whether the individuals made any threats. § 87(2)(b) ran past PO Tang and PO Tang saw him swing at the 911 caller. Lieutenant Asghar, who was present, told the officers to arrest § 87(2)(b). PO Tang heard a Taser being used, but did not see it. PO Tang did not know whether § 87(2)(b) resisted officers who were trying to arrest him. PO Tang saw PO Coste reloading his Taser. Initially, he could not remember whether he pointed his Taser at anyone. After viewing PO Espinoza’s BWC footage that shows him pointing a Taser at Individual 1 and 3, PO Tang stated that he was pointing it at the group of individuals who had assaulted § 87(2)(b) and were coming closer to him and could not specify who exactly in the group he was pointing his Taser at. PO Tang stated that he was trained that the Taser should be used when an individual is not listening to officers, and when an officer feels threatened. The officer can use the Taser to gain compliance.

In his CCRB interview, PO Dalipovski stated that he responded to the location, saw that nothing was happening, and drove away, leaving other officers present, before hearing a request for additional units there (**09 Board Review**). When he returned, PO Dalipovski saw § 87(2)(b) punch § 87(2)(b) in the face. PO Dalipovski grabbed on to § 87(2)(b)’s hands and tried to pull or push him away from § 87(2)(b) and turn his body so that he could arrest § 87(2)(b) and prevent him from striking § 87(2)(b) again. § 87(2)(b) jumped, “flailed” his hands, and pushed against PO Dalipovski. He attempted to move toward the victim again. § 87(2)(b) tripped and both men fell to the ground. § 87(2)(b) tried to get up, and PO Dalipovski got up, too. Another officer whom PO Dalipovski could not identify used their Taser against § 87(2)(b). PO Dalipovski felt the electrical current flowing from § 87(2)(b)’s body into his hand and lost focus briefly before he saw § 87(2)(b) on the ground.

In his CCRB interview, PO Maira stated that he did not recall whether he saw an officer use their Taser against anybody (**10 Board Review**). In his CCRB interview, Sgt. Hernandez stated that when he arrived, § 87(2)(b) was seated in handcuffs and bleeding from his head (**11 Board Review**). In his CCRB interview, PO Hernandez stated that PO Coste had already used his Taser against § 87(2)(b) and that the officers were waiting for an ambulance to arrive for § 87(2)(b) (**12 Board Review**). PO Maira, Sgt. Hernandez and PO Hernandez’s testimony indicates that PO Dalipovski used physical force, PO Coste used his Taser, and PO Tang pointed his Taser before they arrived.

§ 87(2)(b) (**14 Board Review**)  
Medical Treatment of Prisoner Report # § 87(2)(b) for § 87(2)(b) reads that he complained of pain to his shoulder and that a Taser was used against him (**15 Board Review**). The report notes that § 87(2)(b) was taken to the hospital so that Taser darts could be removed. The FDNY ACR for § 87(2)(b) reads that EMTs arrived at § 87(2)(b) to find § 87(2)(b).

awake and in handcuffs (**16 Board Review**). § 87(2)(b) told EMTs that police used a Taser against him. EMTs treated a small laceration on the top of his head and then took him to § 87(2)(b). § 87(2)(b)'s medical records from the hospital read that he woke up in the ambulance on the way to the hospital and did not remember what happened (**17 Board Review**). § 87(2)(b) was diagnosed with internal bleeding in the space surrounding the brain and its covering tissues and loss of consciousness. He had contusions and abrasions on the rear right side of his head. An X-ray of § 87(2)(b)'s right shoulder ruled out acute injury in the area. § 87(2)(b) was monitored and then discharged. § 87(2)(b)

§ 87(2)(b)'s arrest photograph does not show any injuries (**18 Board Review**). § 87(2)(b) sustained a swollen lip as a result of § 87(2)(b) punching him, according to a photograph from the King's County District Attorney's Office case file (**19 Board Review**). AIDED report § 87(2)(b) prepared for § 87(2)(b) notes that he was punched above his face with a closed fist and suffered a laceration to his lip (**20 Board Review**). § 87(2)(b) refused medical attention.

The UF-61 complaint report, arrest report, criminal court complaint, and district attorney's office complaint room screening sheet are all consistent in noting that § 87(2)(b) punched § 87(2)(b) (**21, 14, 22, 23 Board Review**). All four documents are either created by PO Coste or based upon his testimony.

Threat, Resistance, and Injury (TRI) interaction report § 87(2)(b) prepared for § 87(2)(b) by PO Coste notes that PO Coste intentionally used his Taser to overcome § 87(2)(b)'s resistance or aggression (**24 Board Review**). Captain Steven Rubin of the 62<sup>nd</sup> Precinct investigated this incident and prepared TRI incident report § 87(2)(b) (**24 Board Review**). The results of his interviews and video canvas note that officers responded to a report of men fighting at the location, but the men were not present when they arrived. § 87(2)(b) arrived in a vehicle, ran toward a gas station worker, and punched him in the face. PO Dalipovski pushed § 87(2)(b) away from the worker and struggled to control him. PO Coste used his Taser against § 87(2)(b) who fell and struck the back of his head. Captain Rubin recommended no further action be taken regarding the incident. The X-26 Taser report for PO Coste's Taser shows that PO Coste armed the weapon at 11:05:34 p.m., turned on the safety at 11:05:38 p.m., armed the device again at 11:05:53 p.m., and pulled the trigger to apply electrical current for five seconds at 11:05:56 p.m. (**25 Board Review**).

§ 87(2)(b)

NYPD Patrol Guide Procedure 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (**27 Board Review**). The following factors, among others, are considered when determining whether the use of force is proper: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject's violent history (if known); and the presence of a hostile crowd or agitators.

NYPD Patrol Guide Procedure 221-08 states that the same factors listed in Procedure 221-02 determine the propriety of using Conducted Electrical Weapons (CEW), or Tasers (**28 Board Review**). "A CEW should only be used against persons who are actively resisting, exhibiting active



aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. It will often reduce the potential for injuries to members and suspects that may result from physical restraint and should be regarded as a possible alternative to such force and restraint.” Active aggression is defined as a “threat or overt act of assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.” Active resistance “includes physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” Officers may point and place the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance. When feasible, officers should issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning.

While PO Coste stated that PO Espinoza was “wrestling” with § 87(2)(b) BWC footage shows that PO Espinoza did not use physical force against § 87(2)(b). Therefore, the investigation determined that she was not a subject any force allegations.

§ 87(2)(g) § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b) PO Coste’s BWC footage shows that  
§ 87(2)(b) was approaching the gas station with a non-threatening body language and that he was  
responsive to Lieutenant Asghar as he guided him away from the gas station. § 87(2)(b)  
§ 87(2)(g)  
§ 87(2)(b)

While § 87(2)(b) did not remember whether he punched anybody, the investigation obtained ample testimony and evidence which shows that he punched and injured § 87(2)(b). PO Dalipovski was justified in using physical force to push or pull § 87(2)(b) away from § 87(2)(b) so that he would not punch him again. In doing so, PO Dalipovski prevented injury to § 87(2)(b) in the face of a clear threat. § 87(2)(g)

Video and documentary evidence shows that § 87(2)(b) who is of an average height and build, was aggressive because he punched § 87(2)(b) and that he actively resisted PO Dalipovski’s physical force. In addition, § 87(2)(b) showed an intent to return to § 87(2)(b) when he got to his feet and moved toward § 87(2)(b) after going to the ground with PO Dalipovski. At the moment he began to return to § 87(2)(b) § 87(2)(b) posed a clear threat to § 87(2)(b) and risked igniting a larger conflict between the two groups of males at the gas station, who outnumbered officers. § 87(2)(g)

§ 87(2)(g)  
However, the investigation determined that when Individual 3 pushed PO Tang’s hand, as captured at PO Coste’s BWC video at 0:27 in the recording, he actively resisted PO Tang. § 87(2)(g)

§ 87(2)(g)

The investigation did not obtain any evidence that showed Individual 1 acting in a threatening or aggressive way. However, Individual 1's association with Individual 3 (who had resisted PO Tang's efforts to keep him away from § 87(2)(b) seconds before) and § 87(2)(b) (who had punched § 87(2)(b) seconds before), the recent 911 call about a group of individuals fighting, and the number of officers present in comparison with civilians § 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer Florin Coste threatened § 87(2)(b) with the use of force.**

**Allegation (G) Abuse of Authority: Police Officer Florin Coste frisked § 87(2)(b)**

This allegation was plead based on BWC video. No civilians made these allegations.

PO Coste's BWC video in IA #162, at 1:10 in the recording, shows this allegation (**01 Board Review**). PO Coste and other officers handcuff § 87(2)(b). At 1:12, PO Coste stands up from where he is crouched beside § 87(2)(b)'s body and turns around quickly to face § 87(2)(b). § 87(2)(b) is wearing a grey hooded sweatshirt with green sleeves, a black undershirt, and green and grey sweatpants. He is walking toward PO Coste at a normal walking pace. At first, his arms are crossed in front of his chest, but he quickly extends them away from his body on his left and right sides. PO Coste immediately points his Taser at § 87(2)(b) who is approximately ten feet away. PO Coste lowers the Taser and says, "Stop." § 87(2)(b) alternates between putting his hands up and crossing his arms at his chest. At 1:23, PO Coste bends down reaches toward § 87(2)(b)'s right and left sweatshirt pockets. PO Coste's hands are out of frame at the moments when he frisks § 87(2)(b). PO Coste guides § 87(2)(b) backward, and briefly points his Taser at him again, saying, "Alright, get back."

PO Espinoza's BWC video in IA #162 shows this allegation starting at 1:16 in the recording (**01 Board Review**). At 1:38, PO Coste stands up from kneeling over § 87(2)(b) and turns around. The footage does not show him point his Taser at § 87(2)(b). § 87(2)(b) walks toward PO Coste until he is around three feet away and gesticulates. At 1:48, PO Coste reaches toward § 87(2)(b)'s pants and jacket pockets and frisks them. § 87(2)(b) backs away from the gas station. The footage does not show PO Coste point his Taser at § 87(2)(b) a second time because the camera's view is blocked by a police vehicle.

§ 87(2)(b) does not appear in BWC footage of this incident until the points recorded above.

In his CCRB interview, PO Coste initially stated that he did not remember whether he patted § 87(2)(b)'s pockets or had other interactions with him (**05 Board Review**). PO Coste never heard a description of the perpetrators of the physical fight that transpired before he arrived at the stationhouse. After viewing the BWC in his CCRB interview, PO Coste first stated that the footage did not refresh his recollection of the incident. However, PO Coste later stated that he felt that § 87(2)(b) was acting threatening when he arrived. He presumed that § 87(2)(b) was in one of the vehicles that arrived as officers were leaving, and that one of the people in this group had been charged with weapons and drug-related offenses earlier. § 87(2)(b) approached PO Coste while his back was turned and refused to give him space when ordered. PO Coste did not remember whether he saw any bulges on § 87(2)(b)'s person. PO Coste stated, however, that the video showed that § 87(2)(b) was wearing clothing that one could hide an object in, that the scene was dark, and that § 87(2)(b)'s pockets appeared to be weighed down. PO Coste believed that § 87(2)(b) in the group § 87(2)(b) arrived with may have been carrying a weapon but did not know which person might have a

weapon. PO Coste stated that his intention in pointing his Taser at § 87(2)(b) was to “achieve voluntary compliance” and have § 87(2)(b) back away from him.

In his CCRB interview, PO Tang stated that he did not recall whether PO Coste pointed his Taser at any other individuals than § 87(2)(b) (07 Board Review). He did not remember whether PO Coste frisked anybody. PO Maira’s BWC footage and testimony indicate that he did not arrive at the location until after this incident (01, 10 Board Review).

§ 87(2)(b)

NYPD Patrol Guide Procedure 221-01 states that “force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances” (27 Board Review). The following factors, among others, are considered when determining whether the use of force is proper: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject’s violent history (if known); and the presence of a hostile crowd or agitators. NYPD Patrol Guide Procedure 221-08 states that officers may point and place the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance (28 Board Review). When feasible, officers should issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning.

“Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor, the [criminal procedure law] authorizes a forcible stop and detention of that person.” An officer may frisk the detainee if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed.” “Innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand.” People v. De Bour, 40 N.Y.2d 210, 386 N.Y.S.2d 375, 352 N.E.2d 562 (1976) (30 Board Review). For a frisk to be justified, “the police officer must articulate specific inferences, drawn from the particular facts, which, in light of his experience, would cause a reasonably prudent man in such circumstances to harbor a rational belief of danger.” People v. Watson, 96 A.D.2d 1066 (App. Div. 2nd Dept. 1983) (31 Board Review).

Given the 911 call about fighting at the gas station and § 87(2)(b)’s assault on § 87(2)(b) PO Coste had good reason to want to create a safe distance between himself, other officers, and any observers or antagonistic parties. However, § 87(2)(b)’s behavior, as recorded on PO Espinoza and PO Coste’s BWCs, was not aggressive or resistant. BWC evidence shows that the only interaction that PO Coste had with § 87(2)(b) before pointing his Taser at him was witnessing § 87(2)(b) walking toward the gas station making non-threatening gestures with his hands. § 87(2)(g)

As discussed above, § 87(2)(b)’s behavior upon approaching the gas station was not threatening. In PO Coste’s BWC footage, § 87(2)(b)’s jacket and left pants pockets do appear to be weighed down,

but the objects weighing them down were just as likely to have been legal and harmless as they were to have been a weapon. The only other suspicion that PO Coste had was the unspecific hunch that one of the men who had come to the gas station might have been carrying a weapon or had a history of weapons charges. § 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer Florin Coste threatened an individual with the use of force.**

**Allegation (I) Abuse of Authority: Police Officer Joseph Tang threatened an individual with the use of force.**

This allegation was plead because it was captured on BWC. No civilians made this allegation.

PO Coste's BWC in IA #162 captures his allegation (01 Board Review). At 1:26 in the recording, just after PO Coste frisks and points his Taser at § 87(2)(b) (as noted in the last section), a grey BMW SUV arrives and parks in the street near the gas station. PO Coste walks away from § 87(2)(b) and toward the SUV. At 1:30 in the recording, he quickly points his Taser at the car and says, "Move your car!" At 1:34, he repeats himself, raises his Taser away from his body and points it at the car. A white male with medium-length dark hair, dark clothing, and a heavy build (hereafter referred to as Individual 4) emerges from the driver's seat of the car and stands across the car's hood. PO Coste approaches the car and rounds the hood, saying, "Move your car... Get out of here ... Get back in your car... Get back!" All the while, he is pointing his Taser at Individual 4. Individual 4 walks toward the front of the vehicle but walks back toward the driver's side door as PO Coste approaches him. PO Coste turns toward the gas station away from the car after another officer calls his name. Throughout this clip, Individual 4's body language is neutral, and he has no interactions with anyone.

PO Tang's BWC footage in IA #162 captures this allegation (01 Board Review). At 1:40, PO Tang is standing behind PO Coste as the BMW SUV arrives at the gas station. PO Coste walks toward the SUV and holds his Taser out in front of him, pointing it at the vehicle and the driver. The driver's actions inside of the car are not visible. PO Coste and PO Tang both say, "Get back in the car." PO Coste walks toward the car and begins to round the hood before turning around. PO Tang follows PO Coste with his Taser drawn and pointed at the driver as well.

After viewing the clip in his CCRB interview, PO Coste stated that he did not remember taking the actions in the video (05 Board Review). However, he presumed that the individuals in the car that arrived were involved in the fight that officers had responded to and may have been trying to fight more. PO Coste pointed his Taser at the individual because he wanted to "obtain voluntary compliance" and have him disperse from the location. This was in the interest of the safety of the gas station workers who were already present, as well as of the officers.

In his CCRB interview, PO Tang stated that after PO Coste used his Taser against § 87(2)(b) a SUV with stickers and decals on it stopped abruptly at the gas station 15 feet away from PO Coste (07, 08 Board Review). The car's windows were tinted and PO Tang could not see inside. Individuals exited the car. PO Tang did not want the individuals to approach the officers because the four to five officers on scene were outnumbered. PO Tang pointed his Taser at the individual who got out of the driver's seat because he wanted the individual to comply with his order to get back in the vehicle. The individual got back into the vehicle after PO Tang pointed his Taser at him. PO Tang could not remember whether PO Coste pointed his Taser at the driver as well. PO Tang did not point his taser at the man for any other reason than his non-compliance and the fact that he

and other officers were outnumbered. PO Tang did not recall whether PO Coste pointed his Taser at any other individuals than § 87(2)(b). PO Tang did not remember whether anybody made any threats against parties who were present.

PO Maira's BWC footage and testimony indicate that he did not arrive at the location until after this incident (**01, 10 Board Review**).

NYPD Patrol Guide Procedure 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (**27 Board Review**). The following factors, among others, are considered when determining whether the use of force is proper: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject's violent history (if known); and the presence of a hostile crowd or agitators. NYPD Patrol Guide Procedure 221-08 states that officers may point and place the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance (**28 Board Review**). When feasible, officers should issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning.

PO Coste's belief that Individual 4 could have been a member of the group that was fighting before officers arrived at the gas station was unsupported by a description of a perpetrator, but his desire to make the man leave the area was reasonable nevertheless, given the reported physical fight and § 87(2)(b)'s assault on § 87(2)(b). PO Coste's BWC evidence shows that Individual 4 had only parked his car and exited it when PO Coste approached him and pointed his Taser at him. Individual 4's actions, on their own, were neither aggressive nor threatening. § 87(2)(g)

PO Coste and PO Tang's BWC footage shows that only Individual 4 exited the BMW SUV, instead of the two whom PO Tang recalled. Otherwise, PO Tang's statement was consistent with video evidence of the incident. PO Tang's desire to make the man leave the area was reasonable, given the reported physical fight and § 87(2)(b)'s assault on § 87(2)(b). As noted above, Individual 4 did not exhibit aggression or threatening behavior before or after exiting his car. § 87(2)(g)

**Allegation (J) Abuse of Authority: Police Officer Florin Coste threatened § 87(2)(b) with the use of force.**

No civilians made this allegation. This allegation was plead because it was captured on BWC.

PO Coste's BWC footage in IA #162 captures this allegation at 1:40 in the recording (**01 § 87(2)(g) Review**). PO Coste has just approached Individual 4 on the driver's side of his BMW SUV, as noted in the previous section. After another officer calls his name, PO Coste turns around from facing the BMW SUV's driver and walks back toward the gas station. § 87(2)(b) who is wearing a grey and green hooded sweatshirt, a black undershirt, and grey and green sweatpants, is walking away from the



gas station saying, “Start recording. We’re going to turn this bitch up. Take your phones out and start recording.” PO Coste and § 87(2)(b) pass one another walking opposite directions. At 1:47, PO Coste turns around to face § 87(2)(b). At this point, Lieutenant Asghar is placing § 87(2)(b) under arrest by holding on to his arms. § 87(2)(b) turns his head to face Lieutenant Asghar and asks, “Y’all want to go that way? Go that way!” Lieutenant Asghar pulls § 87(2)(b) to the left and rotates his body. § 87(2)(b) does not appear to resist this action. At 1:49, as Lieutenant Asghar pulls § 87(2)(b), PO Coste points his Taser at § 87(2)(b) for approximately one second. The red laser light from PO Coste’s Taser is visible in the center of § 87(2)(b)’s chest as PO Coste points the Taser. PO Coste quickly turns to the left as Lieutenant Asghar continues to pull § 87(2)(b) away from PO Coste.

PO Tang’s BWC footage in IA #162 captures this allegation at 2:03 in the recording (**01 Board Review**). The video is consistent with PO Coste’s recording but was recorded from another angle. As Lieutenant Asghar guides § 87(2)(b), PO Coste (visible on the left side of the frame) points his Taser at § 87(2)(b). PO Tang turns away from PO Coste and assists Lieutenant Asghar and PO Yermiyayev as they handcuff § 87(2)(b). PO Yermiyayev’s BWC footage in IA #162 is consistent with PO Coste and PO Tang’s BWC footage (**01 Board Review**). At 2:03, as Lieutenant Asghar guides § 87(2)(b) by his arms, PO Coste points his Taser at § 87(2)(b). PO Yermiyayev walks toward § 87(2)(b) and assists Lieutenant Asghar in handcuffing § 87(2)(b). § 87(2)(b) appears to physically resist the officers by pulling his arms out from Lieutenant Asghar’s grasp and reaching in front of his body as they handcuff him, but only after PO Coste points the Taser at him.

In his interview, after reviewing this footage, PO Coste stated that he did not remember what he was doing in the video (**05 Board Review**). In his CCRB interview, PO Tang stated that he did not recall whether PO Coste pointed his Taser at any other individuals than § 87(2)(b) (**07, 08 Board Review**). PO Tang did not remember whether anybody made any threats against parties who were present. PO Maira’s BWC footage and testimony indicate that he did not arrive at the location until after this incident (**01, 10 Board Review**).

NYPD Patrol Guide Procedure 221-01 states that “force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances” (**27 Board Review**). The following factors, among others, are considered when determining whether the use of force is proper: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject’s violent history (if known); and the presence of a hostile crowd or agitators. NYPD Patrol Guide Procedure 221-08 states that officers may point and place the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance (**28 Board Review**). When feasible, officers should issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning.

At the time that PO Coste pointed his Taser at § 87(2)(b), § 87(2)(b) was under arrest for disorderly conduct and was agitating multiple bystanders. Given the 911 call about a physical fight and § 87(2)(b)’s recent assault on § 87(2)(b), the scene at the gas station was volatile. Therefore, officers had a substantial interest in placing § 87(2)(b) into custody quickly and minimizing the possibility that he might impede their efforts. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (K) Abuse of Authority: Police Officer Florin Coste threatened an individual with the use of force.**

No civilians made this allegation. This allegation was plead because it was captured on BWC.

PO Coste's BWC footage in IA #162 captures this allegation (**01 Board Review**). At 1:53 in the recording, just after pointing his Taser at § 87(2)(b) as noted in the previous section, PO Coste faces the gas station, then turns toward the road again. At 1:54, he faces Individual 3, who is walking slowly in the road with his hands in his jacket pockets around 15 feet away from PO Coste. At 1:55, PO Coste points his Taser at Individual 3 and says, "Whatever you have in your pockets, show me! Get out of here!" As PO Coste says this, Individual 3 takes his hands out of his pockets and holds them at his side. A cell phone is in his left hand and his right hand is empty. PO Coste continues to walk toward Individual 3 with his Taser pointed at him until he is close enough to touch Individual 3 with his Taser, then turns around and walks back toward the gas station, repeating, "Get out of here."

No additional officers' BWC footage captured this allegation.

In his CCRB interview, PO Coste stated that he did not have an independent recollection of the events shown in the clip but provided commentary on the video (**05 Board Review**). He stated that the video showed that Individual 3 approaching him in a threatening manner with his right hand in his pocket, which might have meant that he was concealing a gun or a knife. PO Coste was "attempting to obtain voluntary compliance" by telling Individual 3 to leave the area and displaying his Taser extended in his left hand. PO Coste did not remember whether he saw any shapes on Individual 3's person that indicated he was carrying a weapon. In his CCRB interview, PO Tang stated that he did not recall whether PO Coste pointed his Taser at any other individuals than § 87(2)(b) (**07, 08 Board Review**).

NYPD Patrol Guide Procedure 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (**27 Board Review**). The following factors, among others, are considered when determining whether the use of force is proper: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject's violent history (if known); and the presence of a hostile crowd or agitators. NYPD Patrol Guide Procedure 221-08 states that officers may point and place the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance (**28 Board Review**). When feasible, officers should issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning.

While Individual 3 briefly and actively resisted an officer by pushing their hand out of his way in the beginning of this incident (see Allegation D), the investigation did not obtain any additional evidence that shows he continued in his active resistance or exhibited any aggression or threatening behavior.

§ 87(2)(g)

the man appears to be walking at a normal pace with his hands stowed in his pockets in an otherwise unremarkable way. He

is not being physically evasive and is far away from the rest of the officers, gas station employees, § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(g) PO Coste had a reasonable interest in establishing a perimeter at the gas station that would prevent people from interfering with police operations and avoid future altercations, § 87(2)(g)

**Allegation (L) Abuse of Authority: Police Officer Florin Coste threatened an individual with the use of force.**

No civilians made this allegation. This allegation was plead because it was captured on BWC.

PO Coste's BWC footage in IA #162 captures this portion of the incident (**01 Board Review**). At 2:00 in the recording, immediately after pointing his Taser at Individual 3 (as noted in the previous section), PO Coste walks from 86<sup>th</sup> Street to the gas station and stops walking once he reaches the parked BMW SUV. At 2:06, he turns to his left to face Individual 3 and Individual 4. He says, "Get out of here. Take your car and move." At the same time, PO Coste points his Taser across the hood of the car at Individual 4, who is holding a cell phone and recording PO Coste. PO Coste lowers the Taser, repeats himself, and walks away from the hood. PO Maira's, PO Hernandez's, and Sgt. Hernandez's BWC footage and testimony indicate that they did not arrive at the location until after this incident (**01, 10-12 Board Review**).

This allegation is not captured in any other BWC video.

After viewing the clip in his CCRB interview, PO Coste stated that he was "attempting to achieve voluntary compliance" and have Individual 4 leave the location because the driver was a part of the group that PO Coste believed was either present to fight with the gas station workers or with the officers, and because they threatened violence against the other group (**05 Board Review**).

In his CCRB interview, PO Tang stated that he did not recall whether PO Coste pointed his Taser at any other individuals than § 87(2)(b) (**07, 08 Board Review**).

NYPD Patrol Guide Procedure 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (**27 Board Review**). The following factors, among others, are considered when determining whether the use of force is proper: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject's violent history (if known); and the presence of a hostile crowd or agitators. NYPD Patrol Guide Procedure 221-08 states that officers may point and place the laser dot of an activated CEW on a subject in order to attempt to achieve voluntary compliance (**28 Board Review**). When feasible, officers should issue a verbal warning, consistent with personal safety, to the intended subject in conjunction with a laser warning.

As noted earlier, PO Coste's belief that the driver was part of a group that was present to fight with the gas station workers was unsupported because he never heard a description of a perpetrator of the physical fight. However, PO Coste had a reasonable interest in establishing a perimeter at the gas



station that would prevent people from interfering with police operations and avoid future altercations, given the 911 call's report of groups fighting and § 87(2)(b)'s assault of § 87(2)(b). Individual 4's behavior on scene was innocuous, though, and he is not pictured in the BWC video doing anything other than standing behind his car and holding his phone up to record, which is not active aggression or threatening behavior. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (M) Abuse of Authority: Police Officer Florin Coste threatened to issue a summons to an individual.**

The following facts are undisputed: After § 87(2)(b) was arrested, Individual 4 parked his car in a traffic lane in front of the gas station. PO Coste told Individual 4 to leave the area multiple times. Individual 4 remained at the location after PO Coste ordered him to leave. PO Coste threatened to issue a summons to Individual 4 after giving these orders.

None of the civilians made this allegation. This allegation was plead because it was captured on BWC.

PO Coste's BWC in IA #162 captures this allegation (**01 Board Review**). At 2:09 in the recording, just after PO Coste finishes pointing his Taser at Individual 4 (as noted in the previous section) PO Coste is standing next to the vehicle in question, a BMW SUV. It is directly to his right and its right wheel is parked around one foot to the right of a dashed white line approximately eight feet away from the curb. PO Coste points over the hood of the car and says, "Take your car and move" four times. At 2:23, he tells the driver, a white male with medium-length dark hair, dark clothing, and a heavy build who is standing next to the open door of the car, "You're going to get a summons." He returns to the sidewalk and faces the car again. The driver has walked away from the car. He now faces PO Coste and appears to be recording the incident on a cell phone. At 2:45, PO Coste says, "I'm giving you a summons." PO Coste walks away from the car and ultimately does not issue the summons.

In his CCRB interview, PO Coste stated that the vehicle was double-parked, which was a VTL violation (**05 Board Review**).

No person shall stop, stand, or park a vehicle in any lane intended for the free movement of vehicles. Rules of the City of New York Title 34 Chapter 4 §4-08(e)(1) (**32 Board Review**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (N) Abuse of Authority: Police Officer Jeffrey Maira threatened to arrest an individual.**

The following facts are undisputed: An unidentified individual (hereafter referred to as Individual 5) approached the area in the gas station where officers were tending to § 87(2)(b)'s injuries and started to record the incident with a cell phone. Multiple officers, including PO Maira, told the man to go further away from them. PO Maira threatened to arrest Individual 5.

None of the civilians made this allegation. It was plead because it was captured on BWC.

PO Ruiz's BWC footage in IA #162 captures this allegation **(01 Board Review)**. At this point, officers are responding to requests for additional units at the location. § 87(2)(b) is already in handcuffs and a perimeter is being formed. At 1:10 in the recording, PO Ruiz approaches the gas station. § 87(2)(b) is lying on the ground and multiple officers are performing first aid on him. Approximately seven feet from them, a male with long dark hair and black clothing (Individual 5) is crouching and recording the officers as they treat § 87(2)(b). Multiple officers tell him to back away, and he complies. At 1:19, PO Maira's voice is audible. He says, "Do what you want with your cameras. Give me 20 feet. That's not 20 feet. Give me 20 feet. [If] I say it again, you'll go with him." PO Maira is visible at 1:24 in the recording.

PO Baloch's BWC footage in IA #162 captures the allegation at 2:15 in the recording **(01 Board Review)**. PO Baloch and other officers are tending to § 87(2)(b) when PO Labruzzo tells the man to back away. At 2:20, PO Baloch turns around and tells the man to back up. He walks toward the man, and the man walks backwards, complying with his orders. The man asks how far he should be from the officers. PO Baloch responds, "500 feet." At 2:26, PO Maira is ordering the man to "Give [him] 20 feet." PO Maira threatens to arrest the man from 2:26 to 2:35 in the recording.

PO Labruzzo's first BWC recording in IA #162 captures this allegation **(01 Board Review)**. At 1:40 in the recording, PO Labruzzo tends to § 87(2)(b)'s injury. In the background, a man with long dark hair, dark blue pants, and a black hooded sweatshirt stands and records § 87(2)(b) with a cell phone from approximately 15 feet away. Between 1:55 and 2:05, PO Maira is partially audible as he orders the man to move back. The allegation is audible in PO Tang's BWC footage in IA #162 between 3:34 and 3:55 in the recording **(01 Board Review)**. The allegation is audible in PO Yermiyayev's BWC footage in IA #162 between 3:33 and 3:51 in the recording **(01 Board Review)**. The allegation is visible and audible in PO Jeune's BWC footage between 2:09 and 2:21 in the recording **(01 Board Review)**.

After viewing PO Ruiz's BWC footage in his CCRB interview, PO Maira identified himself in the video **(10 Board Review)**. He stated that he learned in training that the purpose of this instruction was to create a "basic zone of safety" which would give officers the time necessary to react to a threat. Additionally, the 20-foot zone of safety would help the officers gain control of the situation. PO Maira gave this instruction as a part of general practice and was not aware of any potential threats from the bystanders. PO Maira acknowledged that he said, "give a 20-foot perimeter or you'll go with them" and explained that "or you'll go with them" meant that "you'll be arrested also." PO Maira stated that the violation of the instruction to stay 20 feet away is an arrestable offense under the charges obstructing governmental administration, disorderly conduct, and aggravated harassment.

In his CCRB interview, PO Tang stated that he did not remember whether PO Maira threatened to arrest anybody **(07, 08 Board Review)**.

"Individuals have a right to lawfully observe and/or record police activity in public places... This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who is observing/videotaping... An arrest for Obstruction of Governmental Administration requires probable cause to believe that the person is obstructing governmental administration. Actual interference with the performance of an official police function is required. Interference can include actual physical force, or intruding into the physical space necessary to safely perform police

operations and refusing to obey an order to move back.” “Absent additional actions constituting a violation of law, an individual CAN NOT be arrested for refusing to leave the area.” NYPD Patrol Guide Procedure 203-09, emphasis in original (33 Board Review).

§ 87(2)(g) Individual 5 § 87(2)(g) original distance from § 87(2)(g) and the officers who were treating him was too close. § 87(2)(g)

§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegation (O) Abuse of Authority: Sergeant Heriberto Hernandez threatened an individual with the use of force.**

This allegation was plead because it was captured on Sgt. Hernandez’s BWC video. No civilians made this allegation.

Sgt. Hernandez’s BWC footage captures this allegation (01 Board Review). The video begins as Sgt. Hernandez stands in front of § 87(2)(b) and speaks with other officers who are present. § 87(2)(b) has been led to an ambulance and taken from the location. Sgt. Hernandez stands near the border of the gas station and the adjacent property with other officers and faces a group of bystanders, including Individual 1 and Individual 3. At 3:55, Sgt. Hernandez approaches Individual 3 after he asks for his friend’s hat, which is on the ground near the gas station. PO Hernandez tells Individual 3 that the officers will be taking the hat to the 62nd Precinct stationhouse and positions himself directly in front of Individual 3. Sgt. Hernandez asks Individual 3, “Do you have a problem, sir?” Individual 3 responds, “No. Do you have a problem?” Sgt. Hernandez says, “...Because I’m telling you right now. I will not hesitate... I’m the wrong guy, bro.” Individual 1 separates Sgt. Hernandez and Individual 1. Individual 1 says, “What’s to hesitate for?” Sgt. Hernandez repeats himself, saying, “I’m the wrong guy, bro.” Individual 3 replies, “I’m the wrong guy too.” Sgt. Hernandez says, “Alright, then step up. Then step up. What’s up? What’s up?” I don’t care.” Individual 3 says, “Take off your badge, I’ll step up to you.” Sgt. Hernandez says, “I don’t care. Don’t test me, kid.” Individual 3 tells Sgt. Hernandez to take his shield off again. Sgt. Hernandez says, “I’ll drop you. I’ll drop you.” Individual 3 says something inaudible. Then, Sgt. Hernandez walks toward him, asking, “Are you threatening me?” Another anti-crime officer in plain clothes positions himself in Sgt. Hernandez’s way and guides him back to the gas station. Individual 1 continues to guide Individual 3 away from Sgt. Hernandez. Sgt. Hernandez walks further to the gas station with the other officer in plain clothes, who tell him, “Nothing to lose, bro. Nothing to lose.”

In his CCRB interview, Sgt. Hernandez stated that when he arrived at the location, he started to disperse members a crowd made up of around five people (11 Board Review). Individual 3 wanted to take § 87(2)(b)’s property, which was on the ground. Sgt. Hernandez told him that he could not take the property and told him to disperse. Individual 3 walked a “couple” of feet away, took a stance like a boxer’s, and started to wave his hands with closed fists. He said something to the effect that he would fight Sgt. Hernandez. Sgt. Hernandez asked Individual 3, “Are you threatening me?” He and Individual 3 began to “exchange words.” When questioned about what he meant by saying, “Step up,” Sgt. Hernandez stated, “He said that he wanted to do something, so if he wanted to fight me, I told him to step up. If he’s going to hit me, do it. That’s basically it. Or else, go home.”

Sgt. Hernandez stated that Individual 3’s “fighting stance” was captured just before 4:30 in the recording (11 Board Review). The way Individual 3 pulled up his pants and angled his body from

Sgt. Hernandez was the fighting “boxer’s” stance. By saying, “I’ll drop you,” he meant to show Individual 3 that he intended to defend himself from Individual 3 if he were to fight him. Sgt. Hernandez was taking “a few steps forward” in the clip presented because he was considering arresting Individual 3 for threatening to fight a police officer. Individual 3 could have been arrested for obstructing governmental administration because he refused to leave the area.

In his CCRB interview, PO Hernandez remembered Sergeant Hernandez arguing with “combative” civilians who refused to step back but did not remember anything else about the argument (**12 Board Review**).

NYPD Patrol Guide Procedure 221-01 states that, “When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force” (**27 Board Review**). Officers are to “use only the reasonable force necessary to gain control or custody of a subject.” The following factors, among others, are considered when determining whether the use of force is proper: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject’s violent history (if known); and the presence of a hostile crowd or agitators.

Sgt. Hernandez’s BWC footage shows that he did not de-escalate the altercation he had with the individual and instead escalated his interactions with the man. While officers had a legitimate reason to order the unidentified victim to keep his distance from the gas station, there was no indication that there was any reason for officers to engage with him as a violent subject or the perpetrator of a crime, and there were no emergencies which would have made de-escalation impractical. By engaging in this altercation, telling the man to “step up,” and eventually threatening to “drop” the man without de-escalating the situation, Sgt. Hernandez invited, rather than reduced or eliminated the necessity to use unnecessary force. This risk was made even greater by the adversarial status of the two groups of individuals and the physical violence between them that preceded this moment and had only just subsided. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (**40, 43 Board Review**).

- § 87(2)(b)

§ 87(2)(b)

- PO Coste has been a member of service for nine years and has been a subject to three cases and two other allegations, neither of which were substantiated. § 87(2)(g)
- PO Tang has been a member of service for three years. This is the first complaint to which he has been a subject.
- PO Dalipovski has been a member of service for three years. This is the first complaint to which he has been a subject.
- PO Maira has been a member of service for 14 years and has been a subject to six cases and four other allegations, none of which were substantiated.
  - 201504469 contained an allegation of failure to prepare a memo book entry, which was closed as Other Misconduct. CTS does not display any discipline recommendation, NYPD disposition, or penalty.
  - § 87(2)(g)
- Sgt. Hernandez has been a member of service for 17 years and has been a subject to 12 cases and 28 other allegations, two of which were substantiated.
  - 200907980 contained a substantiated allegation of force with an asp. The Board recommended charges and the NYPD Deputy Commissioner of Trials found Sgt. Hernandez guilty. Sgt. Hernandez lost five vacation days as a penalty.
  - 201903480 contained a substantiated allegation of a failure to provide a business card. The Board recommended command-level instructions and the NYPD imposed instruction as a penalty. The case also contained an allegation of failure to produce a stop and frisk report, which was closed as Other Misconduct. The NYPD imposed instructions as a penalty.
  - § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York alleging severe personal injury, mental anguish, humiliation, embarrassment, deprivation of liberty, anxiety and fright, violation of due process rights, and violation of civil rights and claiming \$10,000,000 as redress (**41 Board Review**). § 87(2)(b)

• § 87(2)(b)

• § 87(2)(b)

Squad No.: 3

Investigator:	<u>Zev Carter</u> Signature	<u>Investigator Zev Carter</u> Print Title & Name	<u>08/19/2021</u> Date
Squad Leader:	<u>Olga Golub</u> Signature	<u>IM Olga Golub</u> Print Title & Name	<u>08/19/2021</u> Date
Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date